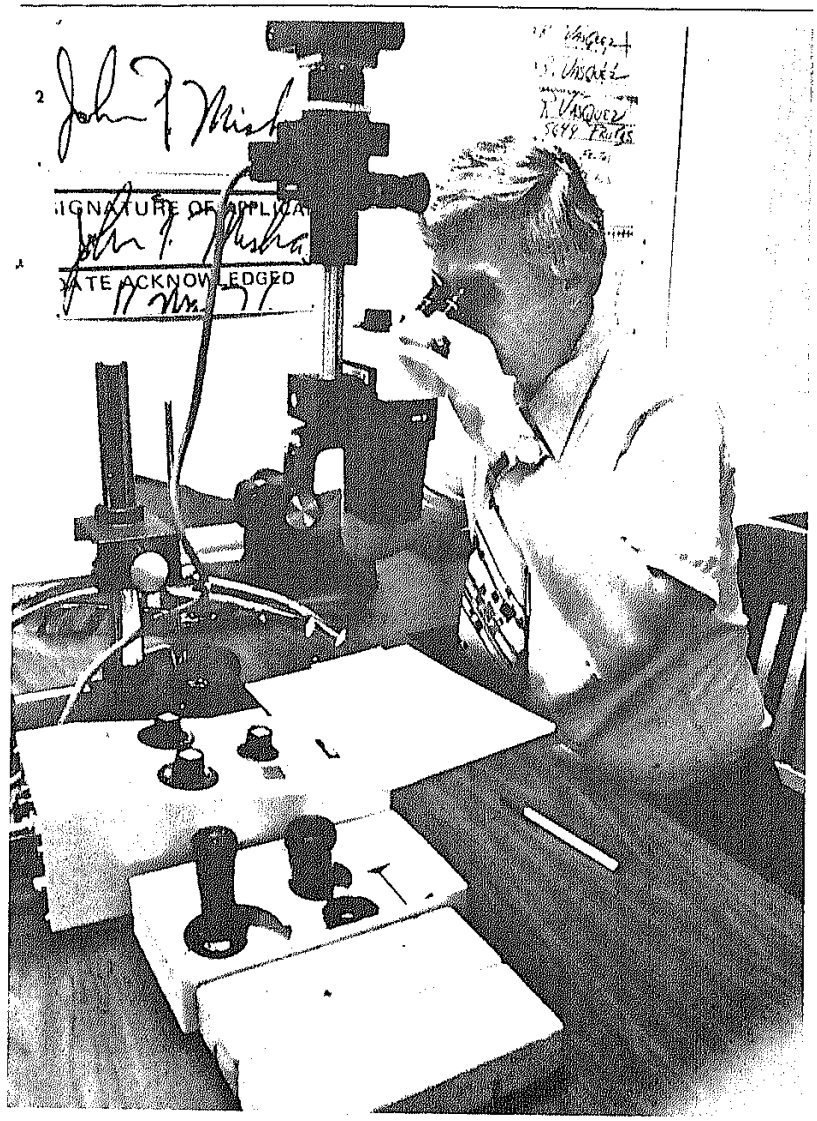
INS Reporter

Immigration and Naturalization Service U.S. Department of Justice Spring 1982



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United States Department of Justice
William French Smith, Attorney General

Immigration and Naturalization Service
Alan C. Nelson, Commissioner

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Cover: The INS Forensic Document Laboratory (FDL), established in 1980, provides scientific and technical support to INS officers in determining the authenticity of suspicious documents uncovered during inspections, examinations, or investigations. One method used in detecting fraudulent documents is the macrophotography system. This system enables the Document Examiner to identify and highlight the smallest alterations in passports, visas, and other documents.

INTRODUCING ALAN C. NELSON OUR NEW COMMISSIONER

Alan C. Nelson

Alan C. Nelson, former member of the Reagan Administration in California and General attorney for Pacific Telephone and Telegraph Company in San Francisco, has assumed the position of Commissioner of Immigration and Naturalization.

President Ronald Reagan nominated Mr. Nelson on November 18, 1981, to fill the post which had been vacant since Leonel J. Castillo resigned on October 1, 1979. His appointment was confirmed by unanimous consent of the U.S. Senate on February 8, 1982.

Mr. Nelson, 48, took the oath of office at a ceremony held at the INS Central Office on February 22, 1982. Attorney General William French Smith administered the oath of office.

In his remarks following the swearing in, Attorney General Smith said, "Now, under the direction of Commissioner Nelson, we must invigorate and organize the Service so it can perform its functions effectively, expeditiously, and fairly. No reform legislation, however enlightened, can have more than a cosmetic effect until this is done. That is why Alan Nelson has been chosen to be Commissioner and that is what we must set about doing. Commissioner, this is a responsibility in which you enjoy my full support and that of the Department."

Mr. Nelson was appointed Deputy Commissioner on September 23, 1981. Prior to that appointment, he had been a General Attorney with Pacific Telephone and Telegraph since 1976. From 1972 through 1975 he was Director of the Department of Rehabilitation for the State of California, and from 1969 through 1972 served as Assistant Director for the Department of Human Resources Development (now known as the Employment Development Department) for the California state government.

He was Deputy District Attorney for Alameda County from 1964 through 1969, and an attorney in the law firm of Rogers, Clark & Jordan from 1958 through 1964.

During his six years in the state government in California, Mr. Nelson played a key role in developing and gaining passage of Governor Reagan's welfare reform program. Also he was former Chairman of the California Governor's Committee for Employment of the Handicapped. He received numerous awards from various public and private organizations for his role in working with the handicapped in California.

Upon his appointment to the Deputy Commissioner post in September, the Attorney General said, "Alan Nelson brings to INS a solid background of achievement in management, both in business and government, and will make a significant contribution in strengthening our Nation's Immigration Service."

He is a 1958 graduate of the University of California Law School, and earned his undergraduate degree in business administration at California. He is a member of the State Bar of California and the American Bar Association.

Mr. Nelson is married and has three children. ■

Areas for Emphasis[1]

By Alan C. Nelson
Commissioner

Today, I should like to focus my testimony on the three major areas I intend to emphasize as Commissioner of the Immigration and Naturalization Service. These areas are: legislative reform, immigration policy leadership, and effective management. I would like to discuss them in some detail with you today.

Legislative Reform

Reform of our immigration laws is essential to the future effectiveness of the Service. The Administration has set the establishment of a sound immigration policy as a matter of high priority. The Omnibus Immigration Control Act, proposed by the Department of Justice, has been introduced in both Houses of the Congress. This legislation addresses the most serious immigration problems confronting our nation. It provides a means of discouraging illegal immigration through an employer sanction program; increases in traditional enforcement efforts both at the border and in the interior; and calls for a new, experimental temporary worker program. It curtails mass arrivals of undocumented aliens by sea by streamlining the procedures for determinations of admissibility and asylum applications, and enables the President to invoke certain powers in order to respond adequately to immigration emergencies. Recognizing that it is unrealistic to remove many illegal aliens already in the U.S. the proposal calls for legalization of illegal aliens who arrived prior to January 1, 1980, to the status of temporary resident. Finally, the legislation proposes increased numerical limitations for immigration from Mexico and Canada, and streamlines the labor certification process to protect American workers against adverse impact from foreign workers.

The urgent cause of national immigration reform was further served by the announcement last week of Congressman Mazzoli and Senator Simpson's legislative proposals. This work represents months of diligent review and analysis and a clear vision of the national interest. It builds on the work of earlier Congresses, particularly the long-standing leadership on this issue displayed by Chairman Rodino. The Administration applauds your efforts. The Simpson-Mazzoli bill is similar in many ways to the Administration proposal and contains the essential elements of comprehensive reform of our laws. I am confident we can work constructively together to achieve effective legislative change.

The Administration remains firmly committed to immigration reform and urges Congress to move quickly in this area.

Our FY 1983 resource request does not include funding estimates for the implementation of new legislation. We are working closely with the Department of Justice and OMB to develop cost estimates for the proposals before you.

Policy

An effective immigration policy requires firm leadership by the executive branch of government. This is especially important as many immigration actions have foreign policy and domestic political ramifications. My goal is to make INS an agency that anticipates upcoming requirements rather than one that merely reacts to situations as they arise.

My policy is one of inter-agency cooperation and coordination with respect to INS activities. I have already established a good working relationship with the Departments of Treasury, State, and Agriculture, especially with the U.S. Customs Service in Treasury and the Bureau of Consular Affairs in the Department of State. All of us recognize that this kind of cooperation is essential if an effective national immigration policy is to be implemented.

Effective Management

My third area of emphasis, Mr. Chairman, is improved and effective management of the Immigration Service, and I would like to devote the major portion of this statement to a discussion of the programs we are implementing in INS to achieve major management reform. The overall accountability, responsiveness, and effectiveness of the agency is being addressed by instituting a system of management by objectives which holds senior Service executives directly accountable for achieving management reform in specific program and management areas. This effort focuses on eight broad areas for improvement. These are:

- Improvement in service to the public and elimination of backlogs;
- Improvement in the effectiveness of enforcement activities;
- Improvement in information collection and storage;
- Improvement in personnel management and the organization of the agency;
- Improvement in resource management;
- Effective implementation of legislative initiatives;
- Enhanced inter-agency cooperative efforts; and
- Improvement in hearing procedures.

These improvements will not come about overnight. The goals of the Mission Plan have been translated into specific priorities for FY 1982. I am determined that these reforms will be implemented quickly, yet with sufficient deliberateness to assure that they take hold and make substantive, not just cosmetic differences.

To execute these eight major program objectives, the following steps have been taken: First, the Service has established concrete priorities and assigned responsibility for those priorities to specific executives in the Service.

[1]This article is taken from testimony presented by Mr. Nelson on March 29, 1982 before the Committee on the Judiciary, Subcommittee on Immigration and Refugee Policy of the U.S. Senate.

Each priority has a specific timetable associated with achieving each goal, so that we can objectivesly measure progress. Second, I will personally review the progress achieved in meeting these objectives on a quarterly basis, and require an explanation for lack of progress or a diversion from the implementation schedule. Third, we have tied performance reviews and ratings of our management personnel to the accomplishment of the tasks outlined in our program goals. Finally, we will update our priorities and program objectives annually through a process of re-establishing targets. Thus, this system will be responsive to changing circumstances, such as new legislation, new Administrative initiatives, and/or any immigration related crisis. However, at the same time, I believe the agency will be more rigorously managed and directed, and can effectively demonstrate a commitment toward achieving significant reforms, even in the midst of unexpected crises that our agency will undoubtedly undergo.

In the context of this overall system for managing the activities of the agency, let me discuss some of the specific reforms underway within each of the eight priority areas—reforms which I believe will be of particular interest to the committee.

Service to the Public and Elimination of Backlogs

First, Mr. Chairman, we are improving our service to the public by streamlining our adjudications processing. We are reducing interview requirements; expanding out test of regional adjudications centers to complete adjudications which do not require personal interviewing; and significantly increasing the total number of adjudications which we handle by means of "upfront" processing at the time of an application for benefits. As you know, the latter process means that an applicant is seen only once and all his business with us is completed without the necessity of rescheduled appointments, second visits, and so forth.

We are also improving service by implementing a standard non-immigrant admissions policy for visitors with B-2 visas. Although these proposed regulations are still in the process of being reviewed, we are confident that setting fixed time lengths of stay for these non-problem visitors will speed the processing of visitors at airports, and will reduce our district office paperwork by eliminating large numbers of unnecessary extensions of stay.

Finally, we have recently completed several studies of improved telephone services to answer more expeditiously the most common questions asked of our personnel at District Offices. We are encouraged by our preliminary results in several cities, and we will expand this program as rapidly as possible in the future. Such an emphasis will certainly eliminate much of the aggravation felt by many applicants for benefits, who simply need information, and not other services. Furthermore, we are examining the concept of regional telephone centers and similar techniques employed by large organizations with similar missions. Decisions on these proposals will be made in the next several months.

Enforcement Activities

We are improving our enforcement activities in many ways, but most especially by continuing our emphasis on targeting enforcement resources for greatest effectiveness by assigning new and existing resources, to the extent possible, to those areas having the highest incidence of illegal entry. Furthermore, we are assuring that sufficient resources are available for removing apprehended aliens at those points, as well as monitoring the use of officer time to ensure that it is appropriately concentrated on direct enforcement activities.

We are also concentrating our investigative resources on what we call area control, that is, investigation of employers of illegal aliens having the greatest potential economic impact in a particular area. In line with this movement toward more strategically critical enforcement activities, we are focusing our anti-smuggling efforts on major violators, particularly in those instances where there is a high likelihood of conspiracies.

Finally, Mr. Chairman, in addition to maintaining sufficient detention space at our existing facilities to ensure adequate detention and deportation capabilities, we are developing plans for the orderly expansion, as needed, of such facilities to cope with possible future emergencies.

Information Collection and Storage

As your committee knows, Mr. Chairman, information collection and storage, data processing, and the use of data in planning our agency's activities, is an area needing dramatic improvements. I am pleased that the Service has completed a long-range, automated data processing plan to establish computerized information systems to allow the Service to make more effective use of information. The implementation of that plan has already begun. We are installing an interim naturalization and casework support system in Los Angeles, and we shall shortly begin installing a deportable alien deportation system in San Diego. We shall assess these systems as soon as they are operational, to ensure their quick transfer to other offices as resources become available.

The Non-Immigrant Document Control system is being developed according to plan and is scheduled for introduction in January, 1983; bids for contract of the system are being received by INS at the present time. The I-94 system backlogs will be eliminated during this calender year so that information about non-immigrants in the U.S. will be current and readily available for enforcement and planning purposes within a year. We appreciate the continuing support this committee has given to non-immigrant control and we are pleased to be able to report favorably on our progress.

I know that the committee staff has been briefed recently on our ADP and service improvements efforts so I am pleased that you are fully informed of our activities.

INS Management and Organization

We have just completed an organizational issues and decision process study of the Service. I am reviewing the results of that study in order to effect those changes which I think necessary

to enhance Service capabilities. In addition, and as I am sure you are aware, the PMIC study which was recently completed made a series of recommendations for specific managerial reform of the agency. Many of these have already been implemented; the remainder are in the final stages of review as to suitability for implementation.

Resource Management

Although all the efforts I have noted have substantial implications for managing the resources of the Service, there are two items to which I would draw your particular attention. We hope to see legislation that eliminates 1931 and 1911 Act overtime and employs the 1945 Act (modified) provisions applicable to all other government employees.

Second, we have undertaken a thorough review of all fees toward the goal of increasing revenue to the government by employing realistic user fees to all applicable areas of INS activity. Our review will be complete in April and we are targeting an October 1, 1982, implementation date. I note that the Simpson-Mazzoli legislation states the sense of Congress that these steps should be taken.

Finally, we are continuing efforts to assure that resources are concentrated as much as possible at high-volume, high-risk ports of entry. We are considering a variety of options in this area, and we are encouraged that we can effect substantially enhanced efficiencies by readjustments at some points along the border, and by cooperative efforts in conjunction with our sister agencies, most especially Customs and Agriculture.

Effective Implementation of Legislation

As I indicated earlier, we are pleased that the committee is now considering immigration reform legislation. We look forward to working with you in seeking common ground between your proposal and the Department's proposal. We are developing implementation plans for the various initiatives under discussion. By including implementa-
ıning of new legislation as one
ajor FY 82 program goals, we
. re you that we will be prepered
to execute new legislation in an efficient professional manner promptly upon enactment.

Inter-Agency Cooperation

Among our inter-agency cooperative efforts has been the recent completion of a crisis management plan. The Department of Justice will assume the lead for the Administration in the execution of that plan, should another Mariel or similar incident occur. The plan is currently under review within the Administration.

We have also given renewed emphasis to joint efforts with the Departments of State, Treasury, and Agriculture. Examples are accelerated planning toward increasing facilitation combined with more effective enforcement at ports of entry. We hope to have facilitation measures in place to meet this summer's travel demands.

Hearing Procedures

We are undertaking changes in agency hearing procedures, designed to simplify those procedures, and to assure adequete administrative support. We are particularly concerned that special inquiry operations have adequate performance end administrative support, and that cases are processed in more timely fashion. The similar reforms proposed by the Administration and by Congressman Mazzoli and Senator Simpson are essential in this regard.

In addition, the Department of Justice has plans to transfer the immigration judges from the INS and consolidating them with the Board of Immigration Appeals within the Department of Justice. Congressmen Mazzoli and Senator Simpson have proposed a similar structure reform in your bill. We will want to work closely with you to achieve the goals we both seek of fair and expeditious adjudications. Such reforms will enhance the fairness of the appeals process in immigration matters, and will create e more independent, professional immigration judiciary free from the appearance of conflicts of interest.

These, then, Mr. Chairmen, represent e sample of the specific efforts underwey in relation to the eight priority areas on which I am focusing as I concentrate efforts to improve the management of the Immigration and Naturalization Service activities. ■

The INS Forensic Document Laboratory

By Robert G. Lockard
Chief Examiner
Forensic Document Laboratory
Central Office

The majority of drug smugglers and many of the aliens attempting to illegally enter the United States, although having different motives for their actions, usually have one thing in common when apprehended; they are in possession of false documents. Even the would-be assassin of the Pope was in possession of bogus papers.

A Justice Department report estimated that 80 percent of all hard drugs flowing into the U.S. were smuggled in with the eid of fraudulent passports. Today, as many as 300,000 fugitives and terrorists use false identity papers, including U.S. passports and visas, to travel around the world.

On an international scale, document fraud is reported to be increasing. On our own international borders, it is most apparent among foreign nationals who either ettempt to pass inspection at our ports of entry or after gaining illegal entry use false documents to support their claims to legal residence.

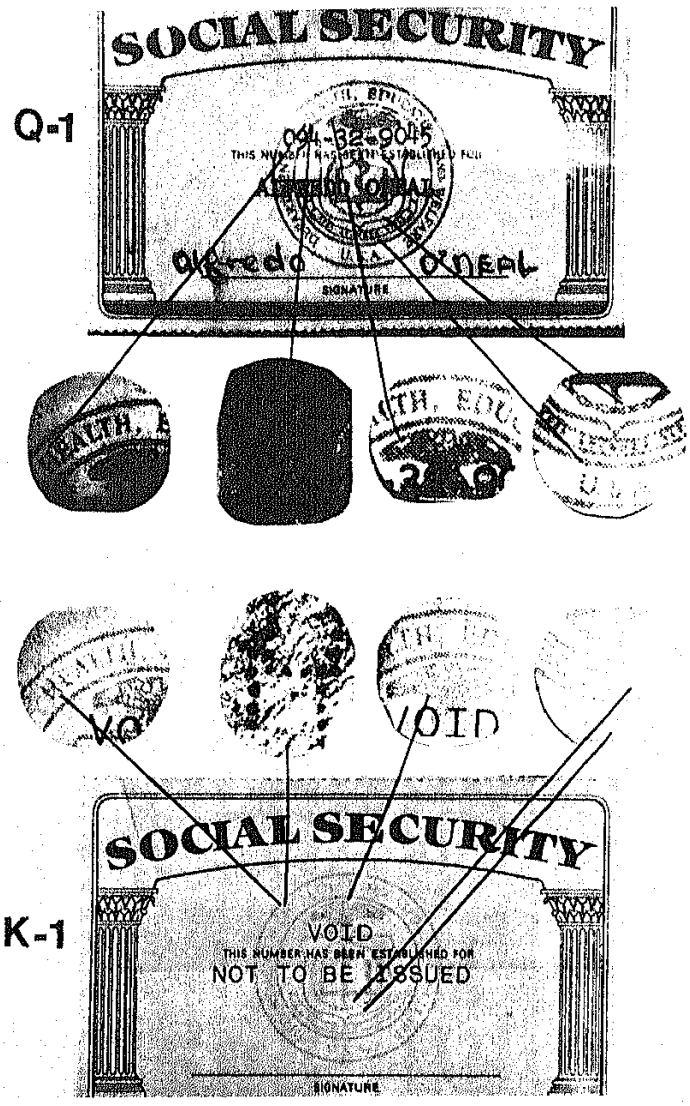
Document falsification has troubled government agencies as well as commercial enterprises throughout history.

New research and technology are continually being sought to overcome the inadequacies of those documents that can be easily counterfeited or altered.

INS has waged a continuing battle to control fraudulent document activity. With the advent of the new I-551, Alien Registration Receipt Card, and the I-586, Border Crossing Card, the two major documents used for legal admission to the United States, some progress has been made toward controlling fraud. However, there are many other useful documents which are also subject to fraud, such as immigrant visas, passports, birth certificates, and marriage and divorce certificates.

To aid in detecting this type of fraudulent activity INS, in 1978, proposed establishment of a Forensic Document Laboratory (FDL) to provide INS officers with scientific and technical expertise in the complex art of document fraud. Congress was concerned by the growing problem and, in 1979, approved the allocation of funds to esteblish a facility within INS. That facility currently is located in temporary quarters within the INS Central Office, and is a part of the Intelligence Branch of the Enforcement Division.

Basically, there are three types of document fraud encountered by authorities. Alteration, which involves changing the indentifying data on a document, including the photograph, name, birth dates, etcetera; counterfeiting, which is the fabrication of an entire document so that it resembles a validly issued official document; and impersonation, which involves the presentation of a legal document by someone other than the rightful owner.



The counterfeiting of Social Security Cards is a common practice. The two Social Security Cards shown here compare the differences in a counterfeit card (top) to an authentic card (bottom). Note the printing process of the top card results in a much darker seal. Other identifying features are illustrated by the enlarged areas in the center.

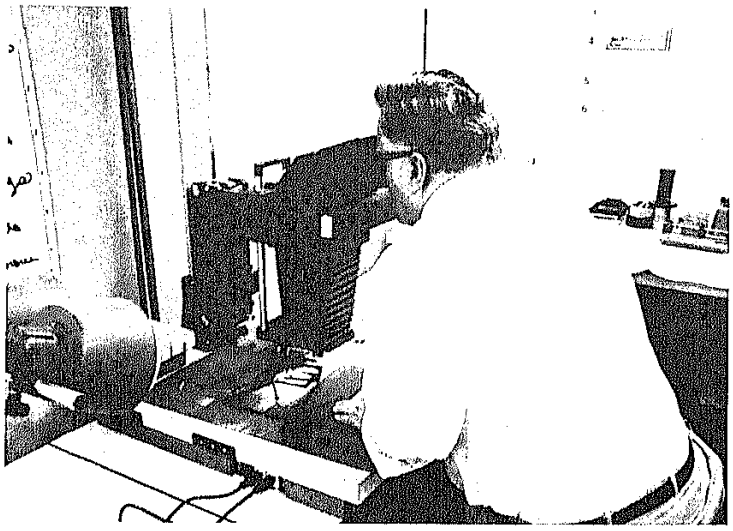
Alteration

The alteration of Service documents, mainly the old I-151, Alien Registration Receipt Card, has been a common practice for years. When altered, the product may vary from excellent to crude depending upon the experience of the fabricator and the equipment available to him. The ready availability of commercial "do-it-yourself" laminating kits and photo-ID systems has been a boon to those who are intent on tampering with the integrity of Service documents.

The principal methods employed usually involve a substitution of the photograph and an attempt to change the name, birth date and other information so it will fit the new bearer of the document. Although some photo-switches and subtle changes can be skillfully executed, the practiced eye of an Immigration Officer frequently can detect the fraud. But, the state of the art is becoming more refined and too many bogus documents are in circulation. In addition, it takes time to determine the authenticity of documents that are of questioneble validity.

Counterfeiting

Along some border areas, the most popular method of obtelning a document to prove legal status in the U.S. is from vendors of counterfeit materials.



Using a Polaroid camera, the Document Examiner is able to take close-up photographs of specific areas of a questioned document so that the details can be compared with a legitimate one.

Package deals, costing from $50 to $300, will provide a counterfeit I-151 and a Social Security Card, or perhaps a U.S. birth certificate, driver's license or voter registration card. Since the processes used to produce the "official" document are available in most commercial printing plants, the vendor needs only a contact with the right establishment. Some vendors establish and run their own printing plants.

Counterfeiters of immigration and related documents have been uncovered both in the U.S. and abroad. In one recent case in Chicago, a search of the suspects premises resulted in the discovery and seizure of more than 48,000 assorted counterfeit documents relating to citizenship or legal residence in the U.S. Many counterfeiters have established very sophisticated operations which include a network of vendors and "runners," who contact potential customers in advance of their actually entering the U.S.

Impersonation

Impersonation is simply the act of representing yourself to be another individual, usually by use of documents legally obtained by that individual. The pretense requires the impostor to represent himself as the rightful holder of that document. This means the photograph appearing on the document, as well as the data contained thereon, must resemble the impostor. Some vendors of documents maintain a large inventory of unaltered Service documents from which they can easily match the requirements of a prospective customer.

Scientific Examination

There are many variations to the three types of document fraud just described and, although Service officers are generally adept at spotting documents in the hands of impostors, or documents that have been counterfeited or altered, many slip by because the fraud perpetrated cannot be detected without a scientific examination. There are many documents in existence today which are produced in such a way that only a careful laboratory examination will answer the question of authenticity.

With establishment of the FDL, Service officers are now able to obtain a scientific examination of suspicious documents uncovered during official inspections, examinations, or investigations. The current work of the laboratory largely involves the identification of latent evidence of document fraud regarding forgeries, spurious typewriting, suspect printing processes, counterfeits, the authentication of official stamp impressions and the detection of alterations, eradications and obliterations.

The laboratory has been deeply involved in these processes but is not fully operational pending the completion of staffing requirements and location of a permanent facility. Once this is accomplished, additional laboratory equipment can be installed which will allow basic paper and ink examinations to be conducted, and special or general

A comparison is made of the various features of the suspected counterfeited document to that of a legitimate one. Such features include checking the wavering lines across the face of the photo and the perforations appearing in both the legitimate and counterfeited document.

photographic processing will be possible.

In addition, a comprehensive file of known or authenticated travel documents is being accumulated by the FDL from world-wide sources, with special emphasis being given those countries, such as Haiti and the Philippines, where there is a particularly high rate of fraud. One of the major contributions of the laboratory will be realized when samples of genuine and bogus documents are collected and more detailed information regarding new techniques of document fraud are made available. The collection will ultimately provide a constructive foundation for the development of several document formats that will be difficult, if not impossible, to counterfeit or duplicate.

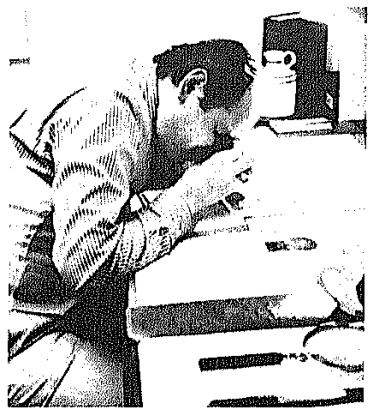
FDL Contributions

The FDL, in its short period of existence, already has contributed to INS enforcement efforts in a number of ways. It has been instrumental in developing a "secure" Contrares-Bell letter which repleced the highly vulnerable type letter issued in Silva-Levi cases[1]; assisted in the prototype TRWOV hand stamp[2] with built-in security features; and, more recently, assisted in developing a new security ink for the exclusive use of INS.

In addition to mass document fraud cases from Afghanistan, the Philippines, Caribbean and Latin American countries, FDL Document Examiners also have provided expert testimony in support of the Government's case at a number of immigration and court hearings.

One of the first requests received by the newly established FDL was from the Office of Special Investigations, Department of Justice, to examine end authenticate 40-yeer-old documents bearing questioned handwritings and signatures of alleged Nazi war criminels. Subsequently, INS Document Examiners testified in court as expert witnesses in the denaturalization hearings of several of these individuals. In addition, the FDL has provided assistance to other government agencies, including the Department of Stete, the FBI, and the Department of Health and Human Services.

There are three major areas in which the FDL can provide assistance: (1) authentication of documents; (2) expert testimony in legal proceedings; and (3) training or femillarizing Service employees as to the value of physical or forensic evidence. With freud becoming more and more sophisticated, the detection of bogus documents becomes more and more difficult. The Forensic

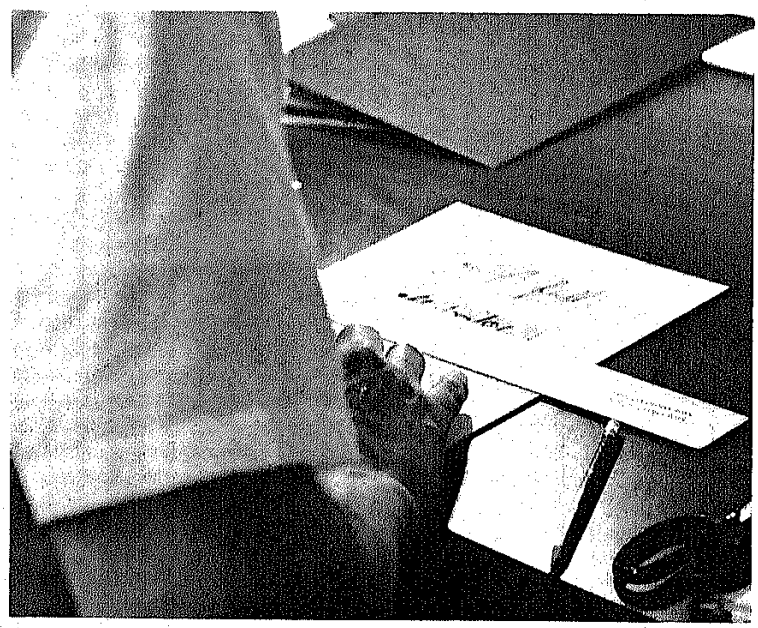


Using a hand magnifier, the Examiner is able to study the handwriting on a suspected forged document. This is but one of several steps in determining forgery.

Document Lab can provide the technicel support needed by INS officers to verify the authenticity of documents. This would eliminate eny guess-work and, et the same time, provide scientific evidence suitable for presentation in a court of law, which frequently is far more persuasive than use of an eyewitness. In addition, the Document Examiner can provide expert testimony in support of his findings of document fraud in legal proceedings.

Some training of Service officers has been provided by FDL staff members at the INS training facility in Glynco, Georgia. Once the FDL has been permanently located and more fully steffed, it is anticipated that training will be provided on a reguler basis to familiarize Service officers with the capabilities of the FDL, what to look for in detecting fraudulent documents, and how to prepare the evidence for examination by the lab.

The potential of the INS Forensic Document Laboratory is yet to be fully realized. The question is frequently asked whether or not a totally counterfeit-proof document is possible to devise. Nothing is impossible. However, it will require the time end the facilities for the necessary research to create a document that cennot be successfully



Here the Document Examiner prepares a chart for use in support of his testimony in court concerning either forged or legitimate handwriting.

compromised. Again, a major contribution to this end will be the comprehensive collection of genuine and bogus documents, which will provide the foundation for development of a foolproof document. With some luck, I believe it can be done. ■

Footnotes

[1]In the case of Silva v. Levi, the court ruled that 144,999 immigrant visas, previously issued to Cuban refugees between 1968 and 1976, should be allocated to would-be Western Hemisphere immigrants who had sought visas during that same period. Thus, persons falling within this category were issued "Silva-Levi" letters by INS allowing them to remain and work in the U.S. pending resolution of the suit. This letter was easily compromised. In Contreras-Bell, which involved similar circumstances to Silva-Levi, a more secure letter was developed and issued by INS to persons covered by this suit.

[2]The term TRWOV refers to persons who "transit (the U.S.) without visa" destined to another country. The TRWOV hand stamp is used by inspectors in noting the alien's I-94, Arrival-Departure Record.

The FDL Staff

Robert G. Lockard, the Chief Examiner of the new facility, was formerly Assistant Director and Training Officer for the U.S. Postal Inspection Service Crime Laboratory in Washington, D.C. He has over a quarter century of law enforcement experience with some 20 years specifically related to the scientific, technical and operational aspects of forensic laboratories. He began his career with the Eugene, Oregon Police Department Crime Laboratory and later served with the Department of State overseas as a technical advisor. He graduated from the University of Oregon, has a Master's degree in Forensic Science, and has been certified by the American Board of Forensic Science Document Examiners and currently serves as a member of that body.

Gideon Epstein and William McCarthy, two nationally recognized experts in the field, are members of Mr. Lockard's staff.

Mr. Epstein, after some 22 years of service, retired from the U.S. Army Crime Laboratory in 1978 as Chief Document Examiner. He subsequently spent two years with the Treasury Department's Alcohol, Tobacco and Firearms National Laboratory in Rockville before joining INS in 1980. Mr. Epstein holds a Bachelor of Science degree from the University of Nebraska (1974) and has completed requirements for a Master's degree in forensic science.

Mr. McCarthy joined INS in late 1980. From 1972 to 1979 he was a Document Examiner with the Police Laboratory of the New York City Police Department and from 1959 to 1972 was a Police Officer/Investigator with that Department. Prior to joining INS, he was in private practice in New York City as a handwriting expert. He holds a Bachelor of Science degree from the N.Y. Institute of Technology (1976) and received a Master's degree in Public Adminstration from Long Island University in 1978. ■

Adopted and Prospective Adopted Children

By Alice Strickler
Immigration Examiner
Adjudications Division
Central Office

It has been INS policy to expedite orphan petitions for humanitarian reasons and to provide adoptive and prospective adoptive parents of foreign orphans with the best possible service. In doing so, INS has been carrying out the intent of Congress which, in enacting orphan legislation, was primarily concerned with the welfare of the children.

Background

From 1948 to 1960, various temporary laws were passed permitting the admission to the United States of foreign-born orphans. In 1961, the provisions relating to orphans became a permanent part of the Immigration and Nationality Act. These provisions were subsequently amended in 1965, 1975, 1978, and 1981. (See accompanying box for legislative citations.)

There has been a general trend over the years towards streamlining the processing of orphan cases. The checks of the records of other agencies for information relating to orphan petitioners, which were once required by INS, have been eliminated except for the fingerprint checks. Delays in processing petitions were greatly reduced some years ago by having the overseas investigation conducted at the time of visa issuance rather than while the petition was pending. The purpose of the overseas investigation is to verify that the child is an orphan as defined by the statute, and to determine whether the child may have a significant affliction or disability not set forth in the petition.

On August 23, 1979, a final rule was published in the Federal Register amending the regulations to permit advance processing of an orphan petition in any case where an eligible petitioner requests it prior to actual location of a child for adoption.[1] This eliminates unnecessary delays once a child is located. Previously, official INS policy permitted advance processing of an orphan petition only when the petitioner and spouse, if married, were traveling abroad expressly to locate and adopt a child.

On November 14, 1980, revised regulations, concerning petitions based on adoptive relationships, were published in the Federal Register.[2] The amendments provide more flexibility in the filing and processing of orphan petitions and requests for advance processing of these petitions. For example, one of the revisions permits the filing of an orphan petition on behalf of a known child even though the home study required by the statute, or the documentary evidence relating to the child, is not yet available.

In addition, the regulations published in November 1980 enable a child who is in the U.S. in parole status, and who has not been adopted in the U.S., to be eligible for the benefits of an orphan petition and adjustment of status on that basis when all statutory requirements

have been met. This is a liberalization of a prior INS policy under which an orphan petition could not be granted on behalf of any child in the United States.

Statutory Complexities

Adoptive and prospective adoptive parents of foreign-born orphans face very complex requirements. These are all a direct result of statutory requirements which appear in Sections 101(b)(1)(F), 204(a), 204(b), and 204(d) of the Act. INS has kept the documentary, regulatory, and procedural requirements at a minimum while conforming to the Congressional intent. In addition to the INS requirments, orphan petitioners must also comply with foreign and often state adoption laws.

The term "orphan" as defined in Section 101(b))1)(F) of the Act means a child under the age of 16 when a petition is filed on his or her behalf, who has no parents "because of the death or diseppearance of, abandonment or desertion by, or separation or loss from, both parents" or who has a sole or surviving parent. In the latter instance, the parent must be "incapable of providing . . . proper care" and must irrevocably releese "the child for emigretion and adoption."

The child must be adopted abroad or be coming to the U.S. for adoption. If the child is adopted abroad, the adoptive parent(s) must personally see and observe the child prior to or during the adoption proceedings. If the child is coming to the U.S. for adoption, the prospective parent(s) must comply with the preadoption requirements, if eny, of the state where the child will reside.

The adoptive or prospective adoptive parent(s) must be a U.S. citizen and spouse or an unmarried U.S. citizen at least 25 years of age. Section 101(b)(1)(F) requires that the Attorney General be "satisfied that proper care . . . be furnished the child if admitted to the United States."

Once a child is classified es an orphan under the Act, he or she is considered to be an immediate relative for the purpose of becoming a lawful permanent resident. Therefore, he or she does not need a visa number.

Home Study Requirement

A home study must be submitted in support of an orphan petition. According to Section 204(d) of the Act, the home study must be "favorably recommended by an agency of the state of the child's proposed residence, or by an agency authorized by that state to conduct such a study or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States."

Under the regulations, "the term 'agency' includes both organizations and individuals."[3] Additionally, the regulations indicate that a home study must contain an evaluation of the adoptive or prospective adoptive parent(s)' "financial, physical, mental, and moral capabilities . . . to rear and educate the child properly" end a description of their living accommodations and the accommodations where the child will reside.[4]

INS operations instructions allow the home study to be conducted by an unlicensed or foreign agency as long as it is favorably recommended by a responsible state agency or licensed agency. This provision is especially useful in a case where the petitioner resides outside the U.S.

Abandonment

The statute plainly states the requirement for establishing that the child of a sole or surviving parent is an orphan. Furthermore, the regulations clearly define sole or surviving parent, as follows:

> A child shall be considered as having a sole parent, his/her mother, when it is established that the child is illegitimate and hes not acquired a step-parent. . . . A child shall be considered as having a surviving parent when it is established that one of the child's parents is living while one is deceased and the child has not acquired a step-parent. . . .[5]

On the other hand, the statute does not define the term "abandonment," and the subject is only discussed once in the regulations:

> A child who has been unconditionally abandoned to an orphanage shall be considered as having no parents. However, a child shall not be considered as having been abandoned when he/she has been placed temporarily in an orphanage, if the parent or parents intend to retrieve the child, or the parent or parents are contributing or attempting to contribute to the child's support, or the parent or parents otherwise exhibit that they have not terminated their parental obligations to the child.[6]

Only one precedent decision, *Matter of Del Conte,* 10 I&N Dec. 761, deals with the issue of abandonment. In that decision, it was found that the children of an adulterous relationship were abandoned.

In the absence of other guidelines, it is extremely difficult, in adjudicating orphan petitions, to make a determination regarding abandonment when the child has not been unconditionally abandoned to an orphanage or when the child was not born of an adulterous relationship. Each case must be decided on its individual merits at the discretion of the District Director. Nevertheless, the following two definitions may prove useful. *Black's Law Dictionary* defines the term "abandon" as:

> To desert, surrender, forsake, or cede. To relinquish or give up with intent of never again resuming one's right or interest. . . . To give up absolutely; to forsake entirely; to renounce utterly; . . . to desert. It includes the intention, and also the external act by which it is carried into effect.[7]

According to *Corpus Juris Secundum:*

> . . . abandonment by a parent means neglect and refusal to perform the natural and legal obligations of care and support, or conduct which evinces a settled purpose to forego all parental duties and all parental claims to the child. Unequivocal and absolute abandonment must be shown.[8]

While a finding of abandonment normally may be made when the child is in the custody of an orphanage or an orphanage-like institution or when the child is a ward of the court, the definition of the term "abandonment" should not be limited to those instances.

In the case where a child is a ward of the court, the parents must have exhibited a refusal to meet the natural and legal obligations for care and support of the child and a determination to forego all parental claims to the child. On the other hand, if the parents have been deprived of custody only temporarily, and they are being given an opportunity to care for the child properly, the child would not be considered an orphan.

Furthermore, if there is evidence that the child has been made a ward of the court merely as a contrivance to enable the child to immigrate to the U.S., the child would not qualify as an orphan.

If the decree declaring the child to be a ward of the court does not describe circumstances which would establish that he or she is an orphan, other appropriate evidence of abandonment must be submitted in support of the petition.

Other Sections Concerning Adoptive Relationships

Although Section 101(b)(1)(F) of the Act is the section under which most adoptive and prospective children gain immigration benefits,[9] there are two other sections of law under which immigration benefits may be obtained through adoptive relationships—Sections 101(b)(1)(E) and 203(a)(7). It should be noted, however, that all three sections specifically provide that natural parents and, in the case of Sections 101(b)(1)(F) and 203(a)(7), prior adoptive parents, *may not* be accorded any immigration benefits through their previous relationship to the child.

At the present time, there is no limit on the number of petitions for children defined by Section 101(b)(1)(E) or (F) of the Act, which may be approved for any one petitioner. Until 1978, however, there was a limit of two petitions.

Immigration benefits may be obtained under Section 101(b)(1)(E) based on an adoptive relationship if the child was adopted before the age of 16 and if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years. While the legal custody must be after the adoption, residence occurring prior to the adoption can satisfy the residence requirement.[10] In addition, the legal custody and residence requirements may be satisfied when they have been met by only one of the adopting parents rather than both.[11] In other words, a petition may be granted when only the petitioner's spouse has met these requirements, provided that the spouse has also adopted the child. Moreover, no home study is required by Section 101(b)(1)(E).

Section 203(a)(7), which relates to nonpreference classification, provides that there must be a favorably recommended home study and an irrevocable release for emigration and adoption in the case of an adopted or prospective adopted child of a U.S. citizen or lawful permanent resident. It stipulates further than no immigrant visa can otherwise be issued to a child under 16 years of age "except a child who is accompanying or following to join his natural parent." Although it is easier for an adopted or prospective adopted child to qualify under nonpreference than under Section 101(b)(1)(F), the issuance of a visa or adjustment of status under nonpreference is contingent upon the availability of a visa number. ■

Footnotes

[1] 44 FR 49430, Aug. 23, 1979, amending 8 CFR 204.1(b).
[2] 45 FR 75156, Nov. 14, 1980, amending 8 CFR 204.1(b) and 204.2(c)(7); adding a new §204.2(e) and (f); and redesignating the existing §204.2(e) and (f).
[3] 8 CFR 204.2(d)(1).
[4] 8 CFR 204.2(d)(2).
[5] 8 CFR 204.2(d)(1).
[6] Ibid.
[7] 5th ed. 1979.
[8] 2 C.J.S. Adoption of Persons §81 (1972).
[9] H. Rep. 1301, 95th Cong., 2nd Sess., p. 2.
[10] 8 CFR 204.2(c)(7). Also, see *Matter of M—*, 8 I&N Dec. 118, and *Matter of Cho*, 18 I&N Dec. 188.
[11] *Matter of Y—K—W—*, 9 I&N Dec. 176.

Orphan Legislation

Temporary Laws

1) Act of June 25, 1948, Sec. 2(e) (Displaced Persons Act of 1948, 62 Stat. 1009, 1010, Public Law 774-80th Congress).
2) Act of July 29, 1953 (67 Stat. 229, Public Law 162—83rd Congress).
3) Act of August 7, 1953, Sec. 5 (Refugee Relief Act of 1953, 67 Stat. 400, Public Law 203—83rd Congress).
4) Act of September 11, 1957, Sec. 4 (71 Stat. 639, Public Law 85-316).
5) Act of September 9, 1959, Sec. 2 (73 Stat. 490, Public Law 86-253).
6) Act of July 14, 1960, Sec. 7 (74 Stat. 504, 505, Public Law 86-648).

Permanent Laws

1) Act of September 26, 1961, Secs. 1-4 (75 Stat. 650, Public Law 87-301).
2) Act of October 3, 1965, Secs. 4 and 8(c) (79 Stat. 911, 915, 197, Public Law 89-236).
3) Act of December 16, 1975 (89 Stat. 824, Public Law 94-155).
4) Act of October 5, 1978 (92 Stat. 917, Public Law 95-417).
5) Act of December 29, 1981, Sec. 2(b) (Immigration and Nationality Act Amendments of 1981, 95 Stat. 1611, Public Law 97-116).

Changes in the Regulations

Under Title 8, Code of Federal Regulations, consult:
47 FR 3757, Jan. 27, 1982, Sec. 238.3.
47 FR 5990, Feb. 9, 1982, Sec. 212.1(e).
47 FR 8005, Feb. 24, 1982, Sec. 212.1(e).
47 FR 8759, Mar. 2, 1982, Sec. 238.3.
47 FR 9982, Mar. 9, 1982, Sec. 238.4.
47 FR 10776, Mar. 12, 1982, Secs. 316a.21(d); 328.2 & 328.3; 332.11(a) & (b); 332a.2 & 332a.13(b); 334.2, 334.11 & 334.21; 335.11(a); 335b; 336.11, 336.16, 336.16a; 339.1; 344.3.
47 FR 12129, Mar. 2, 1982, Interim rule: Secs. 204.a(c)(7); 212.2, a new paragraph (a) is added, former paragraphs (a), (b), (c), (d), (e) and (f) are revised and redesignated as paragraphs (b), (c), (d), (e), (f) and (g), and remaining peregraphs (g), (h), (i) are redesignated as (h), (l) and (j); 212.7(b); 212.10; 214.2(j)(2)(ii) & 214.2(j)(3); 223.2; 223.4; 237.6; 242.8(a); 242.17(d) redesignated as paragraphs (e) and new paragraph (d) is added; 245.1(a), (b) and (c) revised, paragraphs (d) & (e) removed, paragraph (f) revised and redesignated (d), and remaining paragraphs (g) & (h) redesignated (e) & (f); 245.3; 248.2; 265.1.
47 FR 12939, Mar. 26, 1982, Sec. 238.3.
47 FR 16771, Apr. 20, 1982, Sec. 3.1(d)(1-a) & (e). ■

An Analysis of the Efficiency Legislation

The INS efficiency legislation, H.R. 4327, was signed into law on December 20, 1981. The new law entitled, "The Immigration and Nationality Act Amendments of 1981" (P.L. 97-116, 95 Stat. 1611), eliminates or modifies provisions of the Act which have proved unnecessary or impractical. Following is a section-by-section analysis of its provisions:

Section 2(a) amends the nonimmigrant student provisions of section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)), by limiting "F" classification to academic students and creating a new subsection (M) defining nonacademic or vocational students. The Act retains language programs in the current "F" category. The provision is effective June 1, 1982, six months from the date of enactment of the Act, as provided by section 21(b)(1).

Section 2(b) amends sections 101(b)(1)(E) and (F) of the Immigration and Nationality Act, (8 U.S.C. 1101(a)(1)(E) and (F)), to raise the age for classification of foreign-born adopted children from 14 to 16 years of age.

Section 2(c) amends section 101(f) of the Immigration and Nationality Act, (8 U.S.C. 1101(f)), to eliminate adultery and conviction for a single offense of simple possession of 30 grams or less of marihuana as an absolute bar to a finding of "good moral character," which is a condition for naturalization and other immigration benefits. Although a person may still be found to lack good moral character because of adultery or simple possession of marihuana, such a finding is no longer mandatory.

Section 3 amends section 204 of the Immigration and Nationality Act, (8 U.S.C. 1154), by eliminating subsection (d), which required a semimonthly report to Congress on each application approved for third preference (professional and aliens of exceptional ability) or sixth preference (skilled or unskilled worker) immigrant status. This section also corrects the duplicate designation of subsections 204(f) which resulted from the enactment of section 3 of P.L. 95-417.

Section 4(1) amends section 212(a)(17) of the Immigration and Nationality Act, (8 U.S.C. 1182(a)(17)), to remove the requirement that an alien, who was previously deported from the U.S. must obtain the approval of the Attorney General before entering the United States more than five years after the date of deportation or removal. The provision eliminates the need to adjudicate applications for aliens who have remained outside the United States for five years or longer after deportation.

Section 4(2) amends section 212(d)(6) of the Immigration and Nationality Act, (8 U.S.C. 1182(d)(6)), to eliminate the requirement that the Attorny General submit a detailed report to the Congress on each case in which the Attorney General exercises his discretionary authority under section 212(d)(3) to waive certain exclusions for aliens (who were previously convicted of certain crimes or are members of certain excludable classes) seeking to come temporarily to the United States.

Section 4(3) amends section 212(h) of the Immigration and Nationality Act, (8 U.S.C. 1182), to give discretionary authority to the Attorney General to waive exclusion based on simple possession of 30 grams or less of marihuana in the case of an alien spouse, parent, or child of a United States citizen or lawful permanent resident if the exclusion would result in extreme hardship to the citizen or resident alien and if admission would not be contrary to the national welfare, safety, or security. It is the same waiver as is available for other grounds of exclusion based on criminal conduct.

Section 5(a) amends section 212(a)(32) and section 212(j)(1)(B) of the Act to except from the medical examination requirements imposed by each of the sections those alien doctors who were fully and permanently licensed to practice medicine in a state on January 9, 1978 and practicing medicine in a State on that date. The amendment also repeals a third requirement for such exceptions prescribed by Section 601(a) of the Health Planning and Health Services Research and Statistics Extension Act of 1977 (Public Law 95-83), 91 Stat. 394, i.e., that the alien doctor must also have held on January 9, 1977 a valid specialty certificate issued by a constituent board of the American Board of Medical Specialties.

Section 5(b)(1)-(6) amend section 212(j) of the INA to permit aliens coming to the United States to study in medical residency training programs to remain until the typical completion date of the program, rather than only for two years (plus a possible one-year extension) as provided in present law. In addition, the amendment permits the alien to change enrollment in programs once, within two years after coming to the United States. This change of program would require approval by the Director of the International Communication Agency (ICA) and further commitments from the alien to assure that, upon the completion of the program, the alien would return to his country. Each FMG who enters the U.S. under an exchange visitor program will be required to submit an affidavit to the Attorney General each year attesting to his good standing in the program and stating he will return to the country of his nationality or last residence upon completion of the program. The Congress shall receive annual reports from the Director of ICA on the persons in graduate medical education programs based on the submission of the affidavits (Section 5(b)(8)). Under section 5(c), these amendments would apply retroactively to aliens currently in the United States who were made subject to the two-year restriction under the amendment made by Public Law 94-484.

Section 5(b)(7) amends section 212(j) of the INA with respect to the waiver of requirements for certain alien physicians coming to the United States to participate in exchange training programs.

First, the amendment clarifies that a "substantial disruption waiver" may only be given with respect to the medical school affiliation requirement of section 212(j)(1)(A) and to the passage of the Visa Qualifying Examination (VQE) requirement, and not with respect to competency in oral and written English, ability to adapt to the educational and cultural en-

vironment of the program, or adequate prior education.

Second, the amendment extends the waiver authority which would otherwise have expired on December 31, 1981, to December 31, 1983.

Third, the amendment clarifies that requests for substantial disruption waivers are to be considered on a case-by-case basis by the Secretary of Health and Human Services, rather than granted on a blanket basis in accordance with general guidelines.

Fourth, the amendment requires that in order to obtain such a waiver, the training program must have a comprehensive plan to reduce its reliance on alien physicians, with satisfactory details in the plan relating to: (1) problems the programs would encounter without the waiver and how it intends to alleviate such problems, (2) changes which will be made in the program so that it will be more attractive to American medical graduates, (3) recruiting efforts the program has undertaken to attract American medical graduates, and (4) a year-by-year plan to reduce reliance on foreign medical graduates by December 31, 1983.

Fifth, the amendment requires the Secretary of Health and Human Services and the Attorney General to monitor the issuance of the waivers (and their impact on health care delivery in communities for which the waivers are in effect) to assure that the requirements described above are carried out and that proper care is being provided.

Section 5(c) makes the amendments relating to the duration of participation by aliens receiving graduate medical education or training in exchange visitor programs retroactive to January 10, 1978—the date on which the existing three year limit on participation in these programs first became applicable.

Section 5(d)(1) amends section 101(a)(27) of the INA to permit certain alien physicians (including alien physicians who are of national or international renown in the field of medicine) who are fully and permanently licensed and who have been practicing medicine in the United States since January 1978, to be treated as "special immigrants," and thus to become permanent residents without regard to numerical restrictions or labor certification. Brief, temporary trips abroad (e.g., to visit family) should not be construed to break the continuous presence or practice requirements for an alien to benefit under these provisions.

Section5(d)(2) clarifies that alien physicians who qualify under such provisions may adjust their status without regard to restrictions of section 245(c) of the INA (relating to unauthorized employment in the United States).

Section 5(e) provides for a report to Congress within two years by the Secretary of Health and Human Services, after consultation with the Attorney General, the Secretary of State, and the Director of the International Communication Agency, evaluating the value of graduate medical exchange programs to foreign countries and to the United States.

Section 6 amends section 223(b) of the Act (8 U.S.C. 1203(b)) by prescribing that a reentry permit can be issued for up to two years, without extension. Under present law, permits are issued for an initial one-year period, and can be extended upon application for up to an additional year. Since 1957, aliens have been able to use alien registration receipt cards to effect reentry after absences of less than 1 year, and thus applications for reentry permits have been used almost exclusively when an alien anticipates an absence of more than 1 year. This amendment conforms the statute to reflect the present use of such permits (that is, to allow reentry after one year and before two years).

Section 7 amends section 237 of the INA to provide that, aliens who are excluded from entry into the United States, but who cannot be returned to the country from whence they came, can be deported to other countries. This is currently the case only with respect to aliens who are being deported from the U.S. after proceedings conducted under section 242 of the Act. Present law does not provide this option for aliens who are removed from the United States following exclusionary proceedings under section 236. Present law requires an excluded alien to be removed only to the country "whence he came" to the United States. If this country does not recognize the alien's right to be returned (as may be the case of an alien who had resided temporarily in a foreign country not his home), there is no authority to return the alien to any other country, even the country of the alien's nationality or another country which is willing to accept the alien. This amendment provides the Attorney General with the same flexibility with respect to removal of aliens who are not permitted to enter the United States as it does, under section 243(a) of the Act, in the case of aliens who have entered the United States and are subsequently deported. It also eliminates the use of the confusing term "whence he came."

Section 8 amends section 241(f) of the Act (8 U.S.C. 1251), to eliminate the mandatory waiver of deportation based on visa fraud or misrepresentation at the time of entry in the case of a spouse, parent, or child of a United States citizen or lawful permanent resident who is "otherwise admissible." The amendment replaces this with a discretionary waiver in the case of such an alien who possessed an immigrant visa or equivalent document at the time of entry and who is otherwise admissible except for the grounds specified in section 212(a)(14), (20), and (21) of the Act. The present law has been a major source of controversy and litigation for many years. The issue of the proper interpretation of this section has reached the Supreme Court twice with no clear resolution. Compare *INS* v. *Errico*, 385 U.S. 214 (1966), with *Reid* v. *INS*, 420 U.S. 619 (1975). The amendment reconciles the confusing and conflicting judicial and administrative interpretations of the scope of this provision, and clarifies that the waiver is intended only to apply to immigrants, and that it is available for innocent as well as fraudulent misrepresentations.

Section 9 amends section 244(f) of the Immigration and Nationality Act (8 U.S.C. 1254(f)) to permit certain exchange visitors not subject to a requirement of returning to their home countries (or who have satisfied the requirement or had it waived) to apply for suspension of deportation. It prohibits foreign medical graduates who have entered the United States as exchange visitors from applying under this section, notwithstanding a waiver of the two-year residence requirement.

This section also eliminates a restriction on such suspension of deportation in the cases of natives of contiguous

countries and adjacent islands for which "nonquota" visas are otherwise available. The elimination of this latter restriction is basically a conforming amendment, since the restriction has had no legal effect since the enactment of the Immigration and Nationality Act Amendments of 1976 (Public Law 94-571), which became effective January 1, 1977.

Section 10 amends section 248 of the Act (8 U.S.C. 1258) to allow alien exchange visitors classified under section 101(a)(15)(J) who are not subject to the two-year foreign residence requirement of section 212(e) to apply for change of nonimmigrant status. Exchange visitors, who come to the United States to participate in a variety of exchange programs for technical, educational, cultural, or research purposes, are classified as nonimmigrant aliens under section 101(a)(15)(J) of the Act. Prior to 1970, the provisions of section 212(e) of the Act prevented all exchange visitors classified under section 101(a)(15)(J) from applying for permanent residence in the United States unless they first returned to their country of origin for two years. In 1961, section 248 of the Act was amended to prevent "J" aliens from changing nonimmigrant classifications and then applying for permanent residence. However, this prohibition against changing nonimmigrant status has proven unnecessarily broad, since section 212(e) has been amended to reduce the class of "J" aliens subject to the two-year residence requirement. This amendment brings the sections into conformity. This section also amends section 248 to prohibit the change of nonimmigrant status by fiancee or fiance ("K") nonimmigrants. An alien entering under this status must leave the United States if the marriage does not occur within 90 days. A "J" nonimmigrant who came to the United States or acquired such classification in order to receive graduate medical education or training is absolutely barred from changing nonimmigrant status, notwithstanding the fact that the alien may be eligible for a waiver of the foreign residency requirement.

Section 11 amends section 265 of the Act, (8 U.S.C. 1305), to eliminate the annual registration requirement for permanent resident aliens. The amendment retains the existing requirement that those aliens otherwise required to register must notify the Attorney General in writing of a change of address within 10 days of change. The Attorney General may require registration in situations where he deems it necessary upon ten days notice.

Section 12 amends section 274(b) (8 U.S.C. 1324(b)) to bring INS forefeiture law and procedures into conformity with those of other enforcement agencies by removing the "innocent owner" seizure exemption currently contained in the Act. INS will now be merely required to show probable cause that the conveyance seized has been used to illegally transport aliens in violation of section 274(e) of the Act. Once probable cause has been demonstrated, the burden of proof shifts to the owner/claimant to show by a preponderance of the evidence that the seized conveyance was not used illegally, in order to avoid forefeiture. Although not stated specifically in the amendment to section 274(b), under the House Report accompanying the Act, Report No. 917-264, at page 28 (H.R. REP. No. 264, 97th CONG., 1st Sess, 28 (1981)1, INS is required to promulgate regulations which will (1) require its officers to make a good faith inquiry to ascertain ownership of a seized conveyance; (2) insure timely and effective notice to the owner and other with a financial interest in the conveyance; and (3) afford the owner an opportunity (prior to the institution of forefeiture proceedings) to show that he was not involved in criminal activity. The present 72-hour notice provisions meet these requirements.

The amendment also relieves INS of the obligation to pay any administrative and incidental costs incurred by a successful claimant provided INS had probable cause for the original seizure. The requirement that INS satisfy any valid lien or third party interest in the conveyance "without expense to the interest holder" is also removed by the amendment. The amendment allows the lienholder's interest to be satisfied only after INS' costs associated with the seizure have been deducted.

The amendment also provides that the Attorney General may retain, sell, or require the GSA to sell, any forfeited conveyances.

Section 13 amends section 286 of the INA (8 U.S.C. 1356) to enable the INS to recoup appropriated funds spent for the purchase of evidence, when such funds are later recovered.

Section 14 amends section 316(b) of the INA to extend to the spouse and unmarried dependent children of employees of the United States, U.S. firms, or international organizations, the exemption that such employees have under current law from the requirement that, in determining continuity of residence for purposes of naturalization, absence from the United States for more than one year breaks the continuity. This provides the spouse and children of a lawful permanent resident alien whose employment has required the alien to be abroad with the same treatment as the principal alien for purposes of preventing a break in the period of continous residence required for naturalization.

Section 15 amends section 329(b), 334(a), 335, 336, and 328(b)(2) of the INA to eliminate the requirement that two U.S. citizen witnesses submit affidavits and testify during naturalization proceedings attesting to the moral character and background of an applicant for naturalization. In addition, this section eliminates the need to wait 30 days after filing of a petition for naturalization before a certificate may be issued.

Section 16 amends section 344(c) of the Act, (8 U.S.C. 1455(c)), to permit state courts with jurisdiction to naturalize aliens to retain one-half of the naturalization fees collected in each fiscal year up to $20,000, rather than the present one-half of such fees up to $3,000. This increase is necessary to assure that these courts do not withdraw from the naturalization process.

Section 17 amends section 13 of the Act of September 11, 1957 (71 Stat. 642), to restrict the circumstances under which the Attorney General may grant permanent resident status to aliens admitted under section 101(a) (15)A(i) or (ii) or 101(a)(15)(G)(i) or (ii) not to exceed 50 in any fiscal year (subject to Congressional disapproval). Under the amendment the status of such aliens may not be adjusted unless the alien shows compelling reasons demonstrating *both* that: (1) the alien is unable to return to his country of accreditation and (2) the adjustment would be in the national interest.

Section 18 contains miscellaneous technical and conforming amendments.

Section 18(a) changes the reference in section 101(a)(15)(F) of the INA from the former "Office of Education" to the "Secretary of Education" (established under the Department of Education Organization Act, Public Law 96-88); corrects stylistic, typographical inconsistencies in section 101(a)(15) and 101(b)(1) of the Act which have occurred because of the inconsistent style of previous amendments to those sections; and omits a sentence which concerns provisions (sections 350 and 352 of the Act) which were repealed by Public Law 95-432.

Section 18(b) corrects a typographical error in section 106(a)(1) of the Act (75 Stat. 651).

Section 18(c) corrects an omission in section 202(b) of the Act as amended by P.L. 89-236 (79 Stat. 912).

Section 18(d) makes a minor wording change in section 204(a) of the Act.

Section 18(e) corrects a typographical omission in subsection (a)(32) of section 212 of the Act, and adds a new subsection (k) to section 212 of the Act to authorize the Attorney General to waive certain technical defects in immigrant visas which are not the fault of the alien involved. Before 1965, similar authority was contained in section 211(c) of the Act, but was apparently inadvertently dropped when the Act was amended in 1965. The lack of authority to waive technical defects in immigrant visas has caused hardships in some cases.

Section 18(f) corrects a typographical error in section 221(a) of the Act caused by the wording of section 11(a) of Public Law 89-236 (79 Stat. 918).

Section 18(g) corrects a grammatical error in section 231(d) of the Act.

Section 18(h) clarifies in sections 242(b), 242(e), and 244(a) of the Act the inapplicability of suspension of deportation and voluntary departure provisions to aliens who have participated in the Nazis' persecution of others. This conforms these provisions to the strict policies reflected in title I of Public Law 95-549.

Section 18(i) corrects a punctuation error in section 243(a) of the Act.

Section 18(j) corrects terminology and references in section 244(d) of the Act. There no longer are nonpreference immigrant visas generally available from which a numerical reduction can be made, and the authorization for issuance of immigrant visas is under section 201(a) and 202(a) and not under section 203(a)(7).

Section 18(k) corrects references to "quota" and "nonquota" immigrants in section 291 and 349(a) of the Act, made obsolete by changes made by Public Law 89-236.

Section 18(l) corrects section references in section 309(a) and (b) of the Act, required to conform to changes made in section 301 of the Act by Public Law 95-432.

Section 18(m) clarifies redundant language dealing with naturalization of adopted children in sections 320(b), 321(b), and 322(b) of the Act. Prior to Public Law 95-417, the subsections (b) contained in sections 320, 321, and 322, specifically provided that the naturalization procedures available under these sections would not apply to adopted children. Rather, adopted children would be naturalized under the provisions of section 323, which required a two-year residence in the United States. When section 323 was repealed (by section 7 of Public Law 95-417), the language in these subsection (b)'s was changed to reflect that these sections would now apply. The technical change made by the amendment by this section clarifies that the requirements of sections 320(b), 321(b), and 322(b) are in addition to those specified in section 101(b)(1)(E) and (F) for an adopted child to be treated as a child under these provisions.

Section 18(n) effectively reinstates a provision of law (subsection (c) of section 323 of the Act) which was inadvertently repealed when section 323 of the Act was repealed by section 7 of Public Law 95-417. This would avoid unnecessary delays in the naturalization of children who are adopted abroad by U.S. citizens who are being employed abroad in an official capacity, and would permit naturalization of these children in a manner similar to naturalization of alien spouses, under section 319(b) of the Act. This new section is designated as section 322(c).

Section 18(o) deletes the reference in section 337(a) of the Act to section 323 of the Act, which was repealed by section 7 of Public Law 95-417.

Section 18(p) corrects section references in section 341 of the Act to provisions of section 301 of the Act, which were redesignated by section 3 of Public Law 95-432.

Section 18(q) corrects a typographical error in section 349 of the Act introduced by section 4 of Public Law 95-432. The original Act contained the proper designation (see 66 Stat. 235), though at least one previous printing of a compilation of the immigration and Nationality Act prepared by the House Judiciary Committee inadvertently omitted it.

Section 18(r) corrects section references in section 351 of the Act to provisions of section 349 of the Act, which were renumbered by Section 4 of Public Law 95-432.

Section 18(s) clarifies that the general authorization of appropriation provision contained in section 404 of the Immigration and Nationality Act was not intended to provide open-ended authorizations for the refugee assistance provisions added as chapter 2 of title IV of the Act by the Refugee Act of 1980 (Public Law 96-212). Section 414 of that chapter has a specific three-year authorization of appropriations for programs contained in that chapter.

Section 18(t) corrects the table of contents of the Act to reflect repeal of section 345 of the Act by section 12(c) of Public Law 86-682 (74 Stat. 728) and of sections 350, 352, 353, 354, and 355 of the Act by the first section and section 2 of Public Law 95-432.

Section 18(u) corrects a reference in 18 U.S.C. 1429 to subsection (e) of section 336 of the Act, which has been redesignated as subsection (d) by section 15(d)(4) of this Act. It also corrects a reference in the Act of March 16, 1956, to a paragraph in section 301 of the Act which was renumbered by section 3 of Public Law 95-432.

Section 19 provides that numerical limitations on immigrant visas available will not apply to aliens in the United States and seeking adjustment of status if they, on or before June 1, 1978 (the last date nonpreference immigrant visas numbers were available), (1) had applied for such adjustment, (2) were

qualified as nonpreference immigrant, and (3) were determined to be exempt from labor certification because of their actual investment in a business in the United States in which the alien was one of the principal managers. Recent changes in the immigration law, (e.g., Public Laws 95-571 and 95-412) had the effect of allowing a more systematic and uniform flow of immigration but, at the same time, because of the heavy worldwide demand for visas in the first six preferences, there were no visa numbers available to those seeking to immigrate as nonpreference applicants. The beneficiaries of this section had applied for adjustment of status based on their investor status before nonpreference numbers became unavailable and INS has allowed them to remain in the United States to await availability of an immigrant visa.

Section 20 provides that when adjustments of status by foreign medical graduates (section 5(d)(1)) and investors (section 14) counted together with all other visas issued under the numerical limitations of a fiscal year, exceed 270,000, the Secretary of State shall reduce the visas available by that same number in the following fiscal year. This section also provides for similar reductions in the per country limitations for subsequent years.

Section 21 makes the provision of the Act effective upon date of enactment, except for the provisions of section 2(a) and section 16. ■

ADMINISTRATIVE DECISIONS

(Due to space limitations it is possible to print only an index and identifying paragraph on each precedent decision. Copies of the decisions may be seen at any local office of the Immigration and Naturalization Service. Copies may also be purchased on a yearly subscription basis ($50 per year, $12 extra for foreign mailing) from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The Decisions will be printed later in bound volume form. Volumes of past Administrative Decisions are on sale at the Government Printing Office in Washington. **Note: Decisions missing from the numerical sequence have not at this printing been released for publication.)**

Number 2885-Matter of De La Nues. In Exclusion Proceedings, A-23224173. Decided by BIA, Oct. 5, 1981.

(1) Conduct underlying a foreign conviction which constitutes an act of juvenile delinquency under United States standards, however treated by the foreign court, is not a crime for purposes of the Immigration and Nationality Act and accordingly may not serve as the basis of a finding of excludability under section 212(a)(9) of the Act, 8 U.S.C. 1182(a)(9).

(2) Applying the Federal Juvenile Delinquency Act (FJDA) as the benchmark of United States standards, an act which would be a crime if committed by an adult is an act of juvenile delinquency where perpetrated by a youth between 16 and 18 years of age unless the act complained of, if committed by an adult, would be a felony punishable by a maximum penalty of 10 years imprisonment or more, life imprisonment, or death; under those circumstances, the Attorney General may move to transfer the case for criminal prosecution. 18 U.S.C. 5032. *Matter of A-*, 5 I&N Dec. 639 (BIA 1954), modified.

(3) In determining whether a foreign offense would make a juvenile liable to possible criminal prosecution under United States standards by virtue of the penalty involved, the offense is examined in light of the maximum punishment imposable for an equivalent crime described in the United States Code or, if an equivalent crime is not found there, in the District of Columbia Code.

(4) Inasmuch as each crime equivalent to the applicant's offenses (see sections 22-1801(b) and 22-2205, District of Columbia Code, defining second degree burglary and receipt of stolen goods respectively) carries a maximum penalty of 10 years imprisonment or longer, it may not be said that one charged with the commission of either offense while over the age of 16 years is entitled as a matter of law to treatment as a juvenile delinquent and therefore it is incumbent upon the applicant, who committed his offenses at 16 and 17 years of age, to establish that he was in fact dealt with as a juvenile delinquent in Cuba under a system of treatment substantially similar to the FJDA.

(5) The applicant was given a determinate prison sentence in Cuba extending beyond his minority and therefore has not established that he was treated as a juvenile delinquent under a system comparable to our own and must be considered to have been convicted of a crime. *Compare* 18 U.S.C. 5037(b).

(6) The applicant's burglary offense is a crime involving moral turpitude notwithstanding the fact that the offense may have been motivated by economic hardship.

(7) the juvenile offender exception to section 212(a)(9), available to a qualifying youthful offender even though he is deemed to have been convicted of a crime involving moral turpitude rather than adjudicated a juvenile delinquent under United States standards, does not apply to the applicant as fewer than 5 years have elapsed since his release from confinement.

Number 2886-Matter of Onal, In Section 246 Proceedings, A-20058053. Decided by BIA, Oct. 15, 1981.

(1) Where alien respondent's labor certification was invalidated by the Department of Labor under the applicable federal regulations, rescission of the respondent's adjustment of status as a nonpreference immigrant—which was based upon the validity of that labor certification—is mandated by section 246 of the Immigration and Nationality Act, 8 U.S.C. 1256.

(2) Where the Immigration and Naturalization Service instituted rescission proceedings against the respondent within the statutory 5 year period after his adjustment of status occurred, the subsequent delay in holding the rescission hearing was not shown to be unreasonable or prejudicial, nor is it the

type of delay against which the doctrine of estoppel by laches will protect.

Number 2887-Matter of Ho. In Visa Petition Proceedings, A-22952934. Decided by BIA, Oct. 6, 1981.

(1) The People's Republic of China has not promulgated statutes presenting procedural requirements for the establishment of adoption.

(2) There are no known requirements that an adoption, or any written agreement involved, be examined or approved by an agency or official of the government of the People's Republic of China in order to validate an adoption in that country. *Matter of Yee*, 14 I&N Dec. 132 (BIA 1972), clarified.

(3) The procedure for effecting adoptions in the People's Republic of China has not been adequately spelled out in court decisions and other legal writings. *Matter of Yee*, 14 I&N Dec. 132 (BIA 1972), modified.

(4) Where the record in visa petition proceedings provides insufficient evidence of what was required to create a recognized and valid adoption in the People's Republic of China in 1958, and where the petitioner has not provided sufficient evidence to meet the requirements of section 101(b))1)(E) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(E), the record is remanded for further proceedings.

Number 2888-Matter of Frigon. In Visa Petition Proceedings, Hou-N-10770. Decided by Commissioner, Sept. 17, 1981.

(1) Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(iii), defines a nonimmigrant alien trainee as an alien having a residence in a foreign country which he has no intention of abandoning and who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training.

(2) 8 C.F.R. 214.2(h)(4) provides that a trainee shall not be permitted to engage in productive employment if such employment will displace a United States resident and, while not prescribing specific requirements, lists a number of informational factors which a petitioner must furnish and which a Service District Director must consider.

(3) Other criteria for qualifying for H-3 nonimmigrant visa classification: Existence of an actual training program, *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (R.C. 1972); training program must not be for the purpose of recruiting and training aliens for the staffing of United States firms, *Matter of Glencoe Press*, 11 I&N Dec. 764 (R.C. 1966); training must be purposeful and not just incidental to productive employment, *Matter of Sasano*, 11 I&N Dec. 363 (R.C. 1965); and, repetition, review, and practical application of skills alone do not constitute a training program, *Matter of Masauyama*, 11 I&N Dec. 157 (Actg. R.C. 1965).

Number 2889-Matter of Thompson. In Visa Petition Proceedings, ALB-N-4445. Decided by Commissioner, Aug. 11, 1981.

(1) Dissolution of a foreign business or cessation of foreign business activity by the petitioner would not preclude an alien beneficiary from being accorded status as an intra-company transferee since section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L), only requires the employment of the beneficiary outside of the United States by the foreign firm or other legal entity for one year prior to entry.

(2) The existence of a foreign employer or a foreign office of the United States employer is not required. *Metter of Chartier*, 16 I&N Dec. 284 (BIA 1977) followed.

Number 2890-Matter of Vea. In Bond Proceedings, A21 314 945. Decided by BIA, Nov. 4, 1981.

(1) After an initial custody determination has been made by a District Director or other specified officer of the Immigration and Naturalization Service authorized to issue a warrant of arrest, an alien may apply to the foregoing officials for release or amelioration of the conditions of release. 8 C.F.R. 242.2(a).

(2) Once service of a warrant of arrest or determination of any application pertaining thereto has been made by a District Director or other specified Service officer, the alien may apply to an immigration judge for change in custody status at any time before a deportation order becomes administratively final, but if an alien is released from custody, such application must be made to an immigration judge within 7 days from the date of release; thereafter, the application can only be made to a District Director. 8 C.F.R. 242.2(a) and (b).

(3) Direct appeal to the Board of Immigration Appeals from a custody determination of a District Director or other designated Service officer is authorized only after a deportation order becomes administratively final or where recourse to an immigration judge is no longer available because of the expiration of the 7-day period. 8 C.F.R. 242.2(a) and (b).

(4) Where the respondent was still in detention at the time he applied for a change in custody status and no final order of deportation had yet been entered in his case, his application was properly considered by an immigration judge; his recourse thereafter lay in an appeal to the Board, filed within 5 days of the date written notification of the immigration judge's determination is served upon the parties, and not in a request for amelioration to a District Director. 8 C.F.R. 242.2(b).

Number 2891-Matter of SIO. In Bond Proceedings, A23 110 685. Decided by BIA, Nov. 4, 1981.

(1) A immigration judge has authority to consider an application for release or amelioration of the conditions of release from custody after an initial determination with respect to custody has been made by a District Durector or other specified officer of the Immigration and Naturalization Service and at any time before a deportation order becomes administratively final, but if an alien is released from custody, such application must be made to an immigration judge within 7 days from the date of release; thereafter, the application may only be made to a District Director. 8 C.F.R. 242.2(b).

(2) Where the respondent did not avail himself of his regulatory right to submit an application for change in custody status to an immigration judge before

the expiration of the 7-day period, jurisdiction over the application rested with the District Director and recourse from the District Director's decision lay in an appeal to the Board of Immigration Appeals, filed within 5 days after service of written notification of that decision. 8 C.F.R. 242.2(a) and (b).

Number 2892-Matter of Alphonse et al. In Exclusion Proceedings, A26 006 595. Decided by BIA, Nov. 17, 1981.

(1) An immigration judge lacks jurisdiction to consider a motion for a change of venue where an alien is detained by the Immigration and Naturalization Service pending exclusion proceedings notwithstanding the provision in 8 C.F.R. 236.1 granting immigration judges the power to take such actions "as is appropriate and necessary for the disposition of such cases." *Matter of Wadas*, Interim Dcision 2785 (BIA 1980) distinguished.

(2) A change of venue issue may not be reviewed by an immigration judge in exclusion proceedings in the case of a detained alien because such a review would necessarily involve consideration of parole and detention matters which are exclusively within the jurisdictional powers of the District Director. 8 C.F.R. 212.5(a), 233.1 and 235.3.

Number 2893-Matter of Jimenez. In Visa Petition Proceedings, A-22175309. Decided by BIA, Dec. 22, 1981.

(1) Pursuant to the provisions of Chapter IV, Article 30, of the Civil Code of the Dominican Republic, in a divorce ection by mutual consent, native Dominican spouses, whether residing in the Dominican Republic or not, are not required to make a personal court appearance in order to obtain a divorce. Where inconsistent, *Matter of Guzman*, 15 I&N Dec. 624 (BIA 1976), is overruled.

(2) Pursuant to Article 28, Par. V of the Civil Code of the Dominican Republic, which governs the conduct of foreigners seeking to obtain a divorce by mutual consent, only one spouse is required to make a personal appearance in order to obtain a velid divorce in the Dominican Republic.

Number 2894-Matter of M/V "Solemn Judge." In Fine Proceedings, MIA 10/12.1785. Decided by BIA, Jan. 21, 1982.

(1) In the absence of a showing of "affirmative misconduct" on the part of a government agent, the Board of Immigration Appeals decided not to meet the issue of whether the doctrine of estoppel can be applied against the government; "affirmative misconduct" was not shown by the fact that former President Jimmy Carter issued Presidential Determination No. 80-16 on April 14, 1980, or his "open hearts and open arms" speech on May 5, 1980; likewise, "affirmative misconduct" was not demonstrated by the absence of a warning to the carrier by the United States Customs Service concerning the subject of administrative fines for bringing undocumented aliens to the United States or by the fact that the Customs Service issued the carrier clearance to travel to Cuba.

(2) The Attorney General has delegated to the Commissioner of the Immigration and Naturalization Service the authority to enforce the provisions of the Immigration and Nationality Act and the Commissioner, through his delegate, the District Director, properly exercised that authority under the provisions of section 273(b) of the Act.

(3) The carrier became liable to fines under the provisions of section 273 of the Act by transporting undocumented alien passengers to the United States and, therefore, cannot claim examption from liability merely by delivering his passengers to the Immigration and Naturalization Service for inspection upon arrival in the United States.

(4) The failure of the Immigration and Naturalization Service to respond to the request of the carrier to provide him with addresses of the undocumented alien passengers that he brought to the United States is not a denial of due process of law.

(5) The District Director's decision to impose or not to impose fines for violations of section 273 of the Act involves the exercise of prosecutorial discretion which is not reviewable by the Board of Immigration Appeals.

(6) Remission of fines under section 273(c) of the Act is not warranted because the carrier failed to exercise reasonable diligence in ascertaining and complying with the requirements of the law for bringing alien passengers to the United States.

(7) The defense of duress is not available to the carrier seeking remission of fines under section 273(c) of the Act for the reasons that his objective in bringing immigrants to the United States who did not have proper documentation was contrary to the law; that his action in doing so was not prudent; and that he, in effect, usurped the authority of the Attorney General by precluding the government from screening those immigrants who were inadmissible under United States law.

Number 2895-Matter of Hann. In Visa Petition Proceedings, A-21504220. Decided by BIA, Feb. 3, 1982.

(1) The law of the Dominican Republic does not preclude a nonresident from obtaining a divorce for cause in the Dominican Republic.

(2) Article 17 of the Law on Divorce 1306-bis, Civil Code of the Dominican Republic, does not require the party who obtains a divorce for cause to appear "in person" to have the divorce pronounced and registered. *Matter of Valerio*, 15 I&N Dec. 659 (BIA 1976); *Matter of Gonzalez*, 16 I&N Dec. 178 (BIA 1977); and *Matter of Lucero*, 16 I&N Dec. 674 (BIA 1979), modified.

(3) The visa petition was properly denied on the ground that the petitioner's marriage to the beneficiary is invalid, *i.e.*, at the time it was entered into, the petitioner's divorce had not yet became final and he was not free to contract another marriage. ■